



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2021-0631; FRL-9125-01-R2]

## Disapproval of Interstate Transport Requirements for the 2008 Ozone National Ambient Air Quality Standards; New York and New Jersey

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to disapprove State Implementation Plan (SIP) submissions from New York and New Jersey regarding the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). This provision requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader "infrastructure" requirements of CAA section 110(a)(2), which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-OAR-2021-0631 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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- II. The 4-step interstate transport framework and EPA’s Revised Cross-State Air Pollution Rule Update
- III. Summary of New York’s SIP Revision and the EPA’s Analysis
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**I. Background**

Section 110(a) of the CAA imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the “infrastructure” SIP because the SIP ensures that states can implement, maintain, and enforce the air standards. Within these requirements, CAA section 110(a)(2)(D)(i)(I) contains requirements to address interstate transport of NAAQS pollutants or their precursors. CAA section 110(a)(2)(D)(i)(I), which is also known as the “good neighbor” provision, requires SIPs to contain provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts that will contribute

significantly to nonattainment of the NAAQS in any other state (commonly referred to as prong 1) or interfere with maintenance of the NAAQS in any other state (prong 2). A SIP revision submitted under this provision is often referred to as an “interstate transport SIP” or a good neighbor SIP. In this action, EPA proposes to disapprove SIP submissions from the states of New York and New Jersey with respect to these good neighbor requirements.

On March 12, 2008, EPA strengthened the NAAQS for ozone. 73 FR 16435 (March 27, 2008). The EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. The EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard, including the interstate transport requirements, were due March 12, 2011.<sup>1</sup>

On April 4, 2013, the New York State Department of Environmental Conservation (NYSDEC) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (i.e., the infrastructure requirements) related to the 2008 ozone NAAQS, including interstate transport. The EPA disapproved the portion of that submittal addressing the good neighbor provision (i.e., CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2)) for the 2008 ozone NAAQS on August 12, 2016.<sup>2</sup> The EPA’s August 12, 2016 disapproval of the portion of New York’s submittal addressing the good neighbor provision for the 2008 ozone NAAQS was based on the EPA’s determination that New York’s SIP was deficient for a number of reasons.<sup>3</sup>

On October 17, 2014, the New Jersey Department of Environmental Protection (NJDEP) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 ozone NAAQS, including interstate transport. On March 30, 2016, New Jersey withdrew the portion of the submittal addressing the good neighbor provision for the 2008 ozone NAAQS.

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<sup>1</sup> See CAA section 110(a)(1).

<sup>2</sup> 81 FR 58849 (August 26, 2016).

<sup>3</sup> See id.

On October 26, 2016, the EPA published the Cross-State Air Pollution Rule Update (or CSAPR Update),<sup>4</sup> which promulgated Federal Implementation Plans (FIPs) for 22 states, including New York and New Jersey, that the EPA found failed to either submit a complete good neighbor SIP, or for which EPA issued a final rule disapproving their good neighbor SIPs for the 2008 ozone NAAQS. The FIPs promulgated for these states included new nitrogen oxide (NO<sub>x</sub>) ozone season emissions budgets for Electric Generating Units (EGUs). These emissions budgets took effect in 2017 in order to assist downwind states with attainment of the 2008 ozone NAAQS by the Moderate area attainment date of July 11, 2018. In the CSAPR Update, based on the information available at the time, the EPA acknowledged that the promulgated FIPs for all of the 22 states except Tennessee only partially addressed good neighbor obligations under the 2008 ozone NAAQS.

In October 2017, the EPA issued guidance<sup>5</sup> to states to facilitate their efforts to develop SIPs that address their outstanding good neighbor obligations for the 2008 ozone NAAQS. The EPA guidance provided future year ozone design values and contribution modeling outputs for monitors in the United States based on air quality modeling for 2023. The EPA's modeling indicated that there were no monitoring sites, outside of California, projected to have nonattainment or maintenance problems in 2023.

On December 21, 2018, the EPA published the Cross-State Air Pollution Rule Close-Out (or CSAPR Close-Out),<sup>6</sup> which found, in the exercise of the EPA's FIP authority under CAA section 110(c), that the CSAPR Update was a complete remedy based on air quality analysis of the year

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<sup>4</sup> "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS," 81 FR 74504 (October 26, 2016).

<sup>5</sup> "Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 1110(a)(2)(D)(i)(I)," October 27, 2017. Available at [https://www.epa.gov/sites/production/files/2017-10/documents/final\\_2008\\_o3\\_naaqs\\_transport\\_memo\\_10-27-17b.pdf](https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf).

<sup>6</sup> "Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard," 83 FR 65878 (December 21, 2018).

2023. This finding was based on the same modeling results released in EPA’s October 2017 guidance described in this section.

On September 25, 2018, the NYSDEC submitted a SIP revision to address the EPA’s August 26, 2016 disapproval of the portion of New York’s April 4, 2013 submittal addressing the good neighbor provision for the 2008 ozone NAAQS. On May 13, 2019, New Jersey submitted a SIP revision, which also addressed the good neighbor provision for the 2008 ozone NAAQS.<sup>7</sup> These SIP submittals were not required as EPA’s finding in the CSAPR Close-out was that there were no further obligations in addition to the CSAPR Update FIPs for either of these states.

On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the CSAPR Update, concluding that it unlawfully allowed upwind states to continue their significant contributions to downwind air quality problems beyond the statutory dates by which downwind States must demonstrate their attainment of ozone air quality standards. *Wisconsin v. EPA*, 938 F.3d 303, 318–20 (D.C. Cir. 2019) (*Wisconsin*) (per curiam); see also *id.* 336–37 (concluding that remand without vacatur was appropriate). Subsequently, on October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds on which it had remanded without vacatur the CSAPR Update in *Wisconsin*. *New York v. EPA*, 781 Fed. App’x 4, 7 (D.C. Cir. 2019) (*New York*). The court found the CSAPR Close-Out inconsistent with the *Wisconsin* holding because the rule analyzed the year 2023 rather than 2021 and failed to demonstrate that it was an impossibility to address significant contribution by the 2021 Serious area attainment date (“the next applicable attainment date”).

In response to the *Wisconsin* remand and the *New York* vacatur, on March 15, 2021, the EPA finalized the Revised Cross-State Air Pollution Rule Update (or Revised CSAPR Update).<sup>8</sup> The

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<sup>7</sup> New Jersey’s SIP revision also addressed infrastructure and good neighbor provisions for the 2015 ozone NAAQS. The EPA will act on that portion of the submittal in separate actions at a later date.

<sup>8</sup> “Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS,” 86 FR 23054 (April 30, 2021).

Revised CSAPR Update amended the CSAPR Update FIPs for New York and New Jersey for the 2008 ozone NAAQS by issuing revised EGU NO<sub>x</sub> ozone season budgets that reflect additional emissions reductions beginning with the 2021 ozone season. In accordance with *Wisconsin* and *New York*, the EPA aligned its analysis and the implementation of emissions reductions required to address significant contribution with the 2021 ozone season, which corresponds to the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS.<sup>9</sup> The EPA further determined which emissions reductions would be impossible to achieve by the 2021 attainment date and whether any such additional emissions reductions would be required beyond that date. *See Wisconsin*, 938 F.3d at 320; *New York*, 781 Fed. App'x at 7.

## **II. The 4-step interstate transport framework and EPA's Revised Cross-State Air Pollution Rule Update**

The EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate New York's September 25, 2018 SIP submittal and New Jersey's May 13, 2019 SIP submittal addressing the good neighbor provision for the 2008 ozone NAAQS. In particular, EPA is applying the results of the Agency's analyses and determinations for the Revised CSAPR Update in evaluating New York and New Jersey's good neighbor SIP submittals.

Through the development and implementation of several previous rulemakings, the EPA, working in partnership with states, established the following 4-step framework to address the requirements of the good neighbor provision for ground-level ozone NAAQS: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to "link" them to downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind

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<sup>9</sup> *See* CAA section 181(a); 40 CFR 51.1103.

nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to downwind nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emissions reductions through enforceable measures. The EPA applied this 4-step framework in both the CSAPR Update and the Revised CSAPR Update.

Consistent with *Wisconsin* and *New York*, the EPA used 2021 as the analytic year in the Revised CSAPR Update for assessing significant contribution. The year 2021 is appropriate because it coincides with the July 20, 2021 Serious area attainment date under the 2008 ozone NAAQS. The Revised CSAPR Update used the most up-to-date information that the EPA had developed to inform the analysis of upwind state linkages to downwind air quality problems at steps 1 and 2. The EPA used air quality modeling<sup>10</sup> and the latest available ambient air quality measurements to (1) identify locations in the U.S. where the EPA expects nonattainment or maintenance problems (i.e., nonattainment or maintenance receptors), and (2) quantify the projected contributions from upwind states to downwind ozone concentrations at those receptors.

For the Revised CSAPR Update (as well as other previous transport rulemakings), the EPA defined “nonattainment” receptors as those monitoring sites that were projected to exceed the NAAQS in the appropriate future analytic year, while “maintenance” receptors are monitoring sites that are projected to have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. Based on the EPA’s analysis at step 1, the Agency identified four nonattainment and/or maintenance receptors in 2021 (i.e., three receptors in Connecticut and one in Texas).

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<sup>10</sup> The EPA used CAMx version 7 beta 6, which was most recent version of CAMx available at the time, for identifying projected nonattainment and maintenance sites. The EPA is not reopening the modeling analysis for further public comment in this rulemaking for the evaluation of New York and New Jersey’s 2008 ozone NAAQS good neighbor SIP submittals.

At step 2, the EPA used air quality modeling to quantify the contributions in 2021 from upwind states to ozone concentrations at individual monitoring sites. Once quantified, the EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (i.e., 0.75 parts per billion (ppb)) for those monitoring sites identified as nonattainment and/or maintenance receptors in step 1. States with contributions that equal or exceed 1 percent of the NAAQS were identified as warranting further analysis. States with contributions below 1 percent of the NAAQS were found to not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states.

At step 3, the EPA applied the multi-factor test, which considered downwind air quality impacts, cost, and available emissions reductions to determine the amount of linked upwind states' emissions that "significantly" contribute to downwind nonattainment or maintenance receptors. The EPA applied the multi-factor test to both EGU and non-EGU source categories and assessed potential emissions reductions in all years for which there is a potential remaining interstate ozone transport problem (i.e., through 2025), in order to ensure a full remedy. After assessing potential control strategies, the EPA identified an EGU control stringency that reflected the optimization of existing Selective Catalytic Reduction (SCR) controls and installation of state-of-the-art NO<sub>x</sub> combustion controls, represented by a cost of \$1,600 per ton of NO<sub>x</sub> reduced, and the optimization of existing Selective Non-Catalytic Reduction (SNCR) controls, represented by a cost of \$1,800 per ton of NO<sub>x</sub> reduced. At the selected EGU control stringency, downwind ozone air quality improvements continue to be maximized relative to a representative marginal cost. That is, the ratio of emissions reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other control stringency levels evaluated. The EPA determined that these cost-effective EGU NO<sub>x</sub> reductions will make meaningful and timely improvements in downwind ozone air quality.



The EPA also concluded that there are relatively fewer emissions reductions available for non-EGU sources at a cost threshold comparable to the cost threshold selected for EGUs. In EPA's judgment, such reductions were estimated to have a much smaller effect on any downwind receptor in the year by which the EPA found such controls could be installed. For those reasons, the EPA found that limits on ozone season NO<sub>x</sub> emissions from non-EGU sources were not required to eliminate significant contribution or interference with maintenance under the 2008 ozone NAAQS.

Based on the EPA's analysis at step 3, the Agency promulgated EGU NO<sub>x</sub> ozone season emissions budgets developed using a uniform control stringency of optimization of existing SCRs and SNCRs, and installation of state-of-the-art NO<sub>x</sub> combustion controls for certain states. The EPA determined that with implementation of this control strategy, the EPA will have fully addressed good neighbor obligations for the 2008 ozone NAAQS for New York and New Jersey, among other states.

The EPA aligned the implementation of emissions budgets with relevant attainment dates for the 2008 ozone NAAQS, consistent with CAA requirements and the D.C. Circuit's decisions in *Wisconsin* and *New York*. The implementation of these emissions budgets starts with the 2021 ozone season in alignment with the July 20, 2021 Serious attainment date. The EPA further determined which emissions reductions were impossible to achieve by the 2021 attainment date and whether any such additional emissions reductions should be required beyond that date. The EPA estimated that one part of the selected control strategy — installation of state-of-the-art NO<sub>x</sub> combustion controls — requires approximately one to six months depending on the unit. Recognizing that the final rule would become effective slightly after the start of the 2021 ozone season, the EPA determined it was not possible to install state-of-the-art NO<sub>x</sub> combustion controls on a regional scale by the 2021 ozone season. Therefore, the 2021 ozone season emissions budgets reflect only the optimization of existing SCR and SNCR controls at the

affected EGUs, but the emission budgets for the 2022 ozone season and beyond reflect both the continued optimization of existing SCR and SNCR controls and installation of state-of-the-art NO<sub>x</sub> combustion controls.

The EPA's air quality projections anticipate that with the implementation of the identified control strategy for EGUs, downwind nonattainment and maintenance problems for the 2008 ozone NAAQS will persist through the 2024 ozone season. Therefore, the EPA adjusted emission budgets for upwind states that remain linked to downwind nonattainment and maintenance problems through the 2024 ozone season to incentivize the continued optimization of existing SCR and SNCR controls, and installation of state-of-the-art NO<sub>x</sub> combustion controls. The 2024 emission budgets then continue to apply in each year thereafter.

To apply the fourth step of the 4-step framework (i.e., implementation), the EPA included enforceable measures in the promulgated FIPs to achieve the required emission reductions in each of the linked upwind states, including New York and New Jersey. In particular, following the model of prior CSAPR rulemakings, the EPA implemented an interstate emissions trading program (the Group 3 trading program) for the linked upwind states to implement the EGU emissions budgets established at step 3.

Additional information regarding the provisions and supporting analysis for the Revised CSAPR Update can be found in the final rule and in the technical supporting documents for the rulemaking.<sup>11</sup>

### **III. Summary of New York's SIP Revision and the EPA's Analysis**

#### *What did New York Submit?*

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<sup>11</sup> See Docket ID No. EPA-HQ-OAR-2020-0272 at the [www.regulations.gov](http://www.regulations.gov) website. Additional information is also available at [www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update](http://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update).

In its September 25, 2018 SIP submittal, New York followed the 4-step framework for determining its good neighbor obligations. New York provided air quality modeling and a list of already-enacted and “on-the-way” state air pollution control measures to conclude that New York satisfied its good neighbor obligations for the 2008 ozone NAAQS.

New York submitted projection modeling for 2023 based on the Community Multiscale Air Quality Model (CMAQ) that shows the Westport, CT monitoring site as a nonattainment receptor in 2023. New York also submitted state-by-state contribution modeling for 2023 based on the Comprehensive Model with Extensions (CAMx) modeling performed by the Maryland Department of the Environment (MDE). New York coupled its CMAQ projection modeling with MDE’s CAMx contribution modeling to show that New York is linked to the Westport monitoring site<sup>12</sup> using a 1 percent of the NAAQS threshold. Based on this information, New York conceded that it was linked to at least one Connecticut receptor at steps 1 and 2.

New York asserted that, despite its contributions, the State had met its good neighbor obligations through the implementation and enforcement of stringent NO<sub>x</sub> and VOC control measures that the State asserted go well beyond the EPA presumptive cost threshold in the CSAPR Update for highly cost-effective emissions reductions, and through the ongoing adoption and revision of additional control measures to further ensure the reduction of ozone in both New York State and downwind areas.

New York cited its Reasonably Available Control Technology (RACT) rules, which has been required on major sources of NO<sub>x</sub> throughout the State since 1995, and has been periodically updated (in 1999, 2004, and 2010) to keep up with advances in control technology. New York indicated that the State’s RACT presumptive emissions limits and facility-specific emissions limits are based on inflation-adjusted control cost valued at \$5,500 per ton of NO<sub>x</sub> reduced, which New York indicated was consistent with typical costs to install SCR units, and above the

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<sup>12</sup> In the CAMx modeling Westport was not projected to be a nonattainment or maintenance receptor in 2023.

EPA's \$1,400 per ton control cost threshold used for the CSAPR Update that reflected the cost of turning on already-existing SCR control units. New York also noted that the State's EGU NO<sub>x</sub> emissions rates are among the lowest in the country, as reflected in its CSAPR Update ozone season emissions budget, which is lower than all other states with the exception of New Jersey and Delaware. New York indicated that its \$5,500 RACT control cost also applied to non-EGUs.

New York also stated in the September 2018 submittal that it was in various stages of the rulemaking process for additional measures to further control NO<sub>x</sub> and VOC emissions from EGU, non-EGU, area, and mobile sources.

Additional NO<sub>x</sub> reductions would be obtained, according to the State, through the following regulatory updates that were, at the time of the submittal, under development by the State: establishing new NO<sub>x</sub> limits for simple cycle combustion turbines (or "peaking"<sup>13</sup> units), which New York noted would benefit the NYMA on hot summer days that are most conducive to ozone formation (i.e., high electric demand days) (6 NYCRR Part 227); establishing NO<sub>x</sub> limits for distributed generation sources (6 NYCRR Part 222); applying NO<sub>x</sub> RACT requirements to municipal waste combustors (6 NYCRR Part 219); requiring new installation, recordkeeping and reporting requirements for aftermarket catalytic converters (Part 218); and the adoption of the CSAPR Update trading program (6 NYCRR Part 243).

New York's submittal also indicates that it will further control area-source VOC emissions through updates to State VOC RACT regulations for Oil and Gas (6 NYCRR Part 203); Architectural and Industrial Maintenance Coatings (6 NYCRR Part 205); Solvent Metal Cleaning Processes (Part 226); Motor Vehicle and Mobile Equipment Refinishing and Recoating

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<sup>13</sup> Simple cycle combustion turbines, also known as peaking units (peakers), run to meet electric load during periods of peak electricity demand. These peakers typically operate during periods of elevated temperature when electric demand increases. Older simple cycle combustion turbines sometimes have no or only low-level NO<sub>x</sub> emission controls.

Operations (6 NYCRR Part 228, Subpart 228-1); Gasoline Dispensing Sites and Transport Vehicles (6 NYCRR Part 230); and Consumer Products (6 NYCRR Part 235).

In their submittal to the EPA, New York commented that the State’s mobile on-road sector alone (without considering other state emissions) “significantly impacted downwind monitors, with 2023 contributions as high as 4.64 ppb at the Greenwich, Connecticut monitor” (site 090010017), based on the University of Maryland CAMx modeling.<sup>14</sup>

New York stated that the on-road sector is controlled through the inspection/maintenance and anti-idling standards in 6 NYCRR Part 217, “Motor Vehicle Emissions,” and the implementation of the California Low-Emission Vehicle Standards under 6 NYCRR Part 218, “Emission Standards for Motor Vehicles and Motor Vehicle Engines.”

#### *EPA’s Review*

The EPA is proposing to find that the New York September 2018 SIP revision does not meet the State’s obligations with respect to prohibiting emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

As previously indicated in this section, New York acknowledged linkages to a downwind receptor using modeling it submitted. New York evaluated contributions in 2023 rather than 2021. Although EPA’s October 27, 2017 guidance memorandum had recommended that 2023 be used for states to develop, supplement, or resubmit good neighbor SIPs for the 2008 ozone NAAQS to fully address their interstate transport obligations, that guidance memorandum was issued prior to the *Wisconsin* and *New York* decisions by the D.C. Circuit. After *Wisconsin* and *New York*, the year 2023 is no longer an appropriate analytic year because that is past the next applicable attainment date. New York’s SIP revision relied on the incorrect analytic year. Given the July 20, 2021, Serious attainment date, the appropriate analytic year is 2021.

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<sup>14</sup> See Appendix C of New York’s submittal.

Based on the air quality analysis for the Revised CSAPR Update, the EPA identified potential nonattainment receptors in 2021 in Stratford, Connecticut (monitor ID 090013007) and Westport, Connecticut (monitor ID 090019003), and maintenance areas in Madison, Connecticut (monitor ID 090099002) and Houston, Texas (monitor ID 482010024). New York was linked to the nonattainment and maintenance receptor sites at the Connecticut sites based on contribution above the threshold of 1 percent of the 2008 ozone NAAQS (i.e., 0.75 ppb). The levels of New York State contribution to each nonattainment and maintenance receptor in 2021 are shown in Table 1:

**Table 1. New York Contributions to Downwind Nonattainment and Maintenance Areas in 2021**

State	Nonattainment receptors		Maintenance receptors	
	Stratford, CT	Westport, CT	Madison, CT	Houston, TX
New York	14.42 ppb	14.44 ppb	12.54 ppb	0.00 ppb

As previously noted, New York asserted in its September 2018 submittal that, despite its contributions, the State had met its good neighbor obligations “through the implementation and enforcement of stringent NO<sub>x</sub> and VOC control measures that go beyond the EPA presumptive cost threshold in the CSAPR Update for highly cost-effective emissions reductions, and through the ongoing adoption and revision of additional control measures to further ensure the reduction of ozone in both New York [State] and downwind areas.”

The State, however, did not adequately demonstrate that it was controlling its emissions, despite the fact that New York conceded its emissions were linked to a Connecticut receptor (at step 1). The SIP submittal pointed to existing NO<sub>x</sub> RACT measures with presumptive and facility-specific emission limits based on \$5,500 per ton of NO<sub>x</sub> reduced, as well as ongoing

state and local emission control efforts to meet its good neighbor obligations. However, the State did not analyze whether additional control measures could reduce the impact of New York's emissions on out of state receptors. Any additional control measures identified by the analysis would need to be submitted to the EPA for approval into the SIP, approved by the EPA, and made federally enforceable. Step 3 of the good neighbor framework requires that the state (or the EPA in the case of a FIP) conduct a more rigorous analysis of what emission controls are necessary to eliminate "significant" contribution to a downwind nonattainment or maintenance receptor. Merely identifying a range of various emissions control measures that have been or may be enacted at the state or local level, without analysis of the impact of those measures on the out of state receptors, is insufficient as an analytical matter. Further, step 4 of the good neighbor framework calls for those measures identified in step 3 which are necessary to eliminate significant contribution to be included in the state's SIP, so that they may be approved by EPA and rendered permanent and federally enforceable.

As previously indicated in this section, the September 2018 submittal referenced regulatory updates that New York asserted were in development and would provide for additional NO<sub>x</sub> and VOC reductions. The EPA notes that New York has since adopted many of these regulatory updates.<sup>15</sup> New York adopted 6 NYCRR Part 227, Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines," with a State effective date of January 16, 2020, that lowered allowable NO<sub>x</sub> emissions from peaking units during the ozone season on high electric demand days, with compliance dates of May 1, 2023 (100 ppmvd<sup>16</sup> limit), and May 1, 2025 (25 ppmvd limit for gas and 42 ppmvd limit for oil).<sup>17</sup> New York adopted a regulation, 6 NYCRR Part 222, "Distributed Generation

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<sup>15</sup> New York regulations are available at <https://www.dec.ny.gov/regulations/regulations.html>.

<sup>16</sup> The NO<sub>x</sub> emission limits are on a parts per million dry volume basis (ppmvd), corrected to 15 percent oxygen.

<sup>17</sup> New York submitted for SIP approval to the EPA on May 18, 2020. The EPA finalized approval on August 3, 2021. 86 FR 43956 (August 11, 2021).

Sources,” with a State effective date of March 25, 2020, that established NO<sub>x</sub> emissions control requirements for distributed generation and price responsive generation sources<sup>18</sup> with compliance dates of May 1, 2021 and May 1, 2025.<sup>19</sup> New York adopted revisions, with a State effective date of March 13, 2020, to NYCRR Part 219, including adoption of a new Subpart 219-10, “Reasonably Available Control Technology (RACT) For Oxides Of Nitrogen (NO<sub>x</sub>) At Municipal And Private Solid Waste Incineration Units,” which established NO<sub>x</sub> limits for municipal waste combustors with a compliance date of March 14, 2021.<sup>20</sup> New York adopted revisions to NYCRR Part 218, subpart 218-7, “Aftermarket Parts,” with a State effective date of March 14, 2020, which required cleaner California certified aftermarket catalytic converters offered for sale or installed in New York State beginning January 1, 2023.<sup>21</sup> New York adopted revisions, with a State effective date of January 11, 2020, to 6 NYCRR Part 205, “Architectural and Industrial Maintenance Coatings,” with compliance effective January 1, 2021,<sup>22</sup> requiring more stringent VOC limits for coatings.<sup>23</sup> New York adopted revisions, with a State effective date of November 1, 2019, to 6 NYCRR Part 226, “Solvent Metal Cleaning Processes,” establishing VOC content limits for cleaning solvents used in operations not covered by other regulations, beginning November 1, 2020.<sup>24</sup> New York adopted revisions to 6 NYCRR Part 230, with a State effective date of February 11, 2021, “Gasoline Dispensing Sites and Transport Vehicles,” and 6 NYCRR Part 235, “Consumer Products.” Updates to NYCRR Part 230 include

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<sup>18</sup> Distributed generation (DG) sources are engines used by host sites to supply electricity outside that supplied by distribution utilities. This on-site generation of electricity by DG sources is used by a wide-range of commercial, institutional and industrial facilities. DG applications range from supplying electricity during blackouts to all of a facility's electricity demand year-round. NY's DG rule applies to sources enrolled in demand response programs sponsored by the New York Independent System Operator or transmission utilities as well as sources used during times when the cost of electricity supplied by utilities is high (i.e., price-responsive generation sources).

<sup>19</sup> New York submitted for SIP approval to the EPA on October 15, 2020.

<sup>20</sup> New York submitted for SIP approval to the EPA on February 23, 2021.

<sup>21</sup> As of September 1, 2021, New York had not submitted a revised version of subpart 218-7 to the EPA for SIP approval.

<sup>22</sup> The compliance date for the sale of products is January 1, 2021. The sell-through provision allows for product manufactured before January 1, 2021 to be sold through May 1, 2023.

<sup>23</sup> New York submitted for SIP approval to the EPA on October 15, 2020.

<sup>24</sup> New York submitted for SIP approval to the EPA on November 5, 2019. The EPA finalized approval on April 19, 2020. 85 FR 28490 (May 13, 2020).



additional VOC control requirements for facilities during gasoline transfer operations beginning February 5, 2021.<sup>25</sup> Updates to Part 235, which require compliance by January 1, 2022, include revising and establishing VOC contents for consumer products.<sup>26</sup>

New York adopted a revised version of 6 NYCRR Part 243, “CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program,” with a State effective date of January 2, 2019, in order to allow New York to allocate CSAPR allowances to regulated entities in New York under an abbreviated SIP.<sup>27</sup> However, the EPA notes that although New York’s revised Part 243 replaced the EPA’s default allocation procedures for the control periods in 2021 and beyond under the CSAPR Update FIP, the revised state rules did not create any enforceable emission limitations and did not replace the enforceable emission limitations set forth in the additional trading program provisions established under the CSAPR Update FIP. Moreover, the allowance allocations provisions adopted in Part 243 (as well as the additional trading program provisions established under the CSAPR Update) are no longer in effect for New York’s sources because those provisions have been replaced as to the state’s sources by the new trading program provisions established under the Revised CSAPR Update.<sup>28</sup>

As of September 1, 2021, New York had not yet adopted revisions to 6 NYCRR Part 203, “Oil and Gas Sector,”<sup>29</sup> or NYCRR Part 228, Subpart 228-1, “Motor Vehicle and Mobile Equipment Refinishing and Recoating Operation.”

EPA also notes that several of New York’s rules that were approved into the SIP after EPA’s receipt of this September 2018 submittal, such as NO<sub>x</sub> limits on combustion turbines that operate

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<sup>25</sup> New York submitted for SIP approval to the EPA on March 3, 2021.

<sup>26</sup> New York submitted for SIP approval to the EPA on March 3, 2021.

<sup>27</sup> CSAPR provided a process for the submission and approval of SIP revisions to replace certain provisions of the CSAPR FIPs while the remaining FIP provisions continue to apply. This type of CSAPR SIP is termed an abbreviated SIP.

<sup>28</sup> The regulations implementing the Revised CSAPR Update provide that, for states subject to the Revised CSAPR Update and with respect to control periods after 2020, the EPA will no longer administer state trading program provisions approved under SIP revisions addressing the CSAPR Update’s trading program. See 40 CFR 52.38(b)(16)(ii).

<sup>29</sup> New York filed a notice of proposed rulemaking on April 20, 2021. See <https://www.dec.ny.gov/regulations/122829.html>

as peaking units, will not be phased in until 2023-2025, which is past the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS.

Under the *Wisconsin* decision, states and EPA may not delay implementation of measures necessary to address good neighbor requirements beyond the next applicable attainment date without a showing of impossibility or necessity. *See* 938 F.3d at 320. The submission did not offer a demonstration of impossibility of earlier implementation of control measures that would go into effect after 2021.<sup>30</sup>

Additionally, New York said that the State's mobile on-road sector alone significantly impacted downwind monitors and noted that it controls its mobile emissions through its inspection/maintenance (I/M) and anti-idling standards. However, New York did not explain the role their I/M and anti-idling standards play in eliminating their significant contribution.

The EPA acknowledges that New York's RACT presumptive emissions limits and facility-specific emissions limits are based on inflation-adjusted control cost valued at \$5,500 per ton of NO<sub>x</sub> reduced. However, in light of continuing contribution to out of state receptors from the State (at step 1) despite these measures, New York's SIP submission failed to evaluate the availability of any additional air quality controls to improve downwind air quality at nonattainment and maintenance receptors at step 3.

In the analysis performed for the Revised CSAPR Update, the EPA determined that there are cost-effective controls available for EGUs in New York at a lower cost threshold than \$5,500 per ton of NO<sub>x</sub> reduced. Based on EPA's analysis in the Revised CSAPR Update, the EPA has determined that New York State NO<sub>x</sub> emissions significantly impact nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states. Additionally, the EPA has

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<sup>30</sup> While *Wisconsin* was decided after the state made its submission, EPA must evaluate the SIP based on the information available at the time of its action, including any relevant changes in caselaw or other requirements. States are generally free to withdraw and resubmit their SIP submissions in light of intervening changes in the law. The State of New York has not done so in this case.

determined the NO<sub>x</sub> emission reductions necessary to eliminate New York State's significant contribution and has finalized a NO<sub>x</sub> ozone season emissions budget for the State.

Specifically, after assessing potential control strategies, the EPA identified an EGU control stringency that reflected the optimization of existing SCR controls and installation of state-of-the-art NO<sub>x</sub> combustion controls, represented by a cost of \$1,600 per ton of NO<sub>x</sub> reduced; and the optimization of existing SNCR controls, represented by a cost of \$1,800 per ton of NO<sub>x</sub> reduced. The EPA then finalized EGU NO<sub>x</sub> ozone season emissions budgets reflecting the identified EGU control stringency. New York's NO<sub>x</sub> ozone season emission budget as determined by the EPA under the Revised CSAPR Update is 3,416 tons in 2021, and is further lowered to 3,403 tons in 2024, after which no further adjustments are required. The NO<sub>x</sub> ozone season budgets from 2021 thru 2024 represent a two percent<sup>31</sup> reduction from a 2021-2024 baseline<sup>32</sup> to eliminate New York's significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS.

The SIP revision submitted by New York does not provide a demonstration that the existing permanent and federally enforceable control measures contained in the State's SIP achieve the emissions reductions needed to meet the obligations for New York in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program established in the Revised CSAPR Update. The EPA modeling performed to evaluate New York's contributions and emissions reduction obligations already takes into consideration many of the emissions reduction programs identified by the State and, in the Revised CSAPR Update, the EPA found continuing contribution from New York to receptors in Connecticut in 2021 and later years. At a minimum, then, in order for the EPA to approve a SIP revision to replace the FIP promulgated in the Revised CSAPR Update, the State's SIP must

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<sup>31</sup> See Ozone Transport Policy Analysis Final Rule TSD available from the Revised CSAPR Update Docket ID No. EPA-HQ-OAR-2020-0272, via the Federal eRulemaking Portal: [https:// www.regulations.gov](https://www.regulations.gov).

<sup>32</sup> Emissions projected in New York for each year in the absence of the Revised CSAPR Update.

obtain through federally enforceable emission controls the same or greater level of emissions reduction achieved by the FIP.

As provided in Section VII.D.3 of the preamble for the Revised CSAPR Update, should a state submit a SIP revision to replace the FIP that achieves the necessary emissions reductions but does not use the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, in order to best ensure its approvability, the SIP revision should include the following general elements: (1) A comprehensive baseline 2021 statewide NO<sub>x</sub> emission inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that EPA used to calculate the required state budget in this final action (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emission reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such NO<sub>x</sub> controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (see 40 CFR part 51 subpart K (“source surveillance” requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emission reductions in time to meet the 2021 compliance deadline.<sup>33</sup>

The New York SIP submittal did not provide a sufficient demonstration that the existing permanent and federally enforceable control measures already contained in the State’s SIP achieve the emissions reductions needed to meet the obligations for New York in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program. The State did not apply the suggested analysis for

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<sup>33</sup> See 86 FR 23054, 23147-23148 (April 30, 2021) (describing expected elements needed to replace a Revised CSAPR Update FIP). In addition, should a state wish to adopt the Group 3 trading program itself into its SIP, the EPA regulations address replacing the Revised CSAPR Update FIP with a Revised CSAPR Update SIP at 40 CFR 52.38(b)(12).

making such a demonstration, nor did it provide an alternative method for doing so. Based on the deficiencies identified in the New York analysis, the EPA is proposing to disapprove the 2008 ozone New York Infrastructure SIP submission for both the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I).

#### **IV. Summary of New Jersey's SIP Revision and the EPA's Analysis**

##### *What did New Jersey Submit?*

In its May 13, 2019 SIP submittal, New Jersey followed the 4-step framework for evaluating its significant contribution. New Jersey provided air quality monitoring and modeling data, as well as a list of its adopted and implemented air pollution control measures to demonstrate that it satisfied its transport obligations for the 2008 ozone NAAQS.

New Jersey identified downwind air quality problems based on evaluating 2017 actual monitoring data. Nonattainment and maintenance receptor sites were identified at fourteen sites in Connecticut (in Fairfield, Middlesex, New Haven, and New London Counties), New York (in Richmond, and Suffolk Counties), and Pennsylvania (in Bucks and Philadelphia Counties) based on 2015-2017 design values exceeding 75 ppb. The highest reported concentrations were measured at two monitoring sites in Fairfield County, Connecticut (site numbers 90013007 and 90019003), which both had a 2015-2017 design value of 83 ppb.

In its SIP submittal to the EPA, New Jersey indicated that the State potentially significantly contributed to all fourteen nonattainment and maintenance receptors sites based on a predicted New Jersey contribution of more than 1 percent of the NAAQS (0.75 ppb) in 2017 based on EPA modeling performed for the CSAPR Update. New Jersey contribution ranged from 0.93 ppb to 11.90 ppb in 2017; the largest predicted contribution from New Jersey was to the Richmond County, New York monitoring site (site number 360850067).

New Jersey indicated in its submittal that the State was being conservative in its analysis for determining potential significant contribution by using 2017 actual data, rather than predicted concentrations from modeling for 2017 or 2023. New Jersey noted that 2023 is past the applicable date of evaluation when control measures are needed upwind to help downwind monitors reach attainment for either a Moderate classification attainment date of July 20, 2018, or a Serious classification attainment date of July 20, 2021. New Jersey also noted the State evaluated 2023 modeling<sup>34</sup> performed by the Ozone Transport Committee (OTC), and all monitors that New Jersey potentially significantly contributes to (i.e., in the OTC/MANE-VU modeling domain 12-km modeling domain) were predicted to comply with the 2008 ozone NAAQS based on average and maximum projected design values below 75 ppb by 2023.

New Jersey asserted that it has demonstrated that it meets the good neighbor SIP requirements of the Clean Air Act for the 2008 ozone NAAQS by implementing statewide control measures that are more stringent than other upwind and nearby states. New Jersey asserted that considering air quality, emissions reductions from New Jersey's adopted measures, and the cost effectiveness of those measures, no additional emissions reductions from New Jersey are necessary to address its contribution to downwind nonattainment and maintenance areas.

New Jersey noted that from 1990 to 2017, annual NO<sub>x</sub> and VOC emissions in New Jersey have each decreased approximately 77 percent. From 2011 to 2017, annual NO<sub>x</sub> and VOC emissions decreased 31 percent and 17 percent, respectively. From 2002 to 2017, for point sources, NO<sub>x</sub> was reduced by 81 percent and VOC emissions were reduced by 63 percent. New Jersey also noted that its point source emissions represent only about 8 percent of New Jersey's total NO<sub>x</sub> emissions, while mobile sources were approximately 43 percent.

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<sup>34</sup> OTC modeling included in Appendix I of NJ submittal.

New Jersey stated that there has been a significant decreasing trend in 8-hour ozone design values in New Jersey, approximately 40 percent from 1988 to 2017 and 13 percent from 2011 to 2017. According to the State, the significant decrease demonstrates the impact of New Jersey control measures.

New Jersey provided a list<sup>35</sup> of its post-2002 adopted NO<sub>x</sub> and VOC control measures, including estimated cost-effectiveness (\$ (dollar) per ton of NO<sub>x</sub> reduced or VOC reduced), and EPA's approval date<sup>36</sup> for many of the measures. New Jersey notes that the State has met Reasonably Available Control Measures (RACM) and RACT requirements and has gone beyond RACM/RACT by adopting control measures more stringent than Federal rules and rules adopted by other states. Furthermore, New Jersey states that its rules are implemented statewide and not limited to the Northern New Jersey-New York-Connecticut ozone nonattainment area. New Jersey highlighted several of their control measures:

- power generation rules, including requirements for high electric demand days (HEDD) when ozone concentrations are highest. New Jersey estimates NO<sub>x</sub> emissions reduction during HEDD to be over 60 tons from a baseline without the rules;

- municipal waste combustor controls;
- stationary reciprocating internal combustion engines (RICE) controls (as low as 37 kW) used for distributed generation or demand response (DG/DR), which the State noted are often operated on hot summer days that often coincide with high ozone days;

- mobile source controls including New Jersey's Low Emission Vehicle Program (NJ LEV) (based on California's program), which requires a certain percentage of Zero Emission

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<sup>35</sup> Table 5 of the SIP submittal.

<sup>36</sup> Control measures that the State identified as "USEPA Approval Pending" have been approved by the EPA as follows: The EPA finalized approval of the CTGs for Fiberglass Boat Manufacturing Materials; Industrial Cleaning Solvents; Miscellaneous Metal and Plastic Parts Coatings; Paper, Film, and Foil Coatings; and Natural Gas Engines and Turbines. 83 FR 50506 (October 9, 2018). The EPA approved revisions to New Jersey's I/M rules. 83 FR 21174 (May 9, 2018). The EPA finalized approval of New Jersey's Vapor Recovery 2017 Stage I and Refueling. 85 FR 36748 (June 18, 2020).

Vehicles in the State, as well as its rules for vehicle idling and heavy-duty vehicle inspection and maintenance using on-board diagnostics technology; and

- various NO<sub>x</sub> and VOC measures to address EPA Control Techniques Guideline (CTG), NO<sub>x</sub> Alternative Control Technique (ACT) categories, and updated controls at gasoline dispensing facilities including California Air Resources Board (CARB) enhanced vapor recovery certified Phase I vapor recovery systems, dripless nozzles, and low permeation hoses.

Furthermore, New Jersey asserts that it has implemented its control measures before the 2008 attainment deadlines. New Jersey provides the example of the New Jersey power generation and HEDD rules being effective in 2015 or earlier. New Jersey further asserts that, when determining New Jersey significant contribution to interstate transport, the State should not be penalized for its early adoption of appropriate and effective rules in advance of and more stringent than other states.

In the State's evaluation of cost effectiveness, New Jersey claims that it has gone beyond the measures of other nearby and upwind states and previously established EPA cost effectiveness thresholds. The State notes that the cost-effectiveness values associated with many of its adopted rules are several times greater than the threshold of \$1,400 per ton NO<sub>x</sub> reduced set for upwind states in the CSAPR Update. For example, according to the State's list of existing NO<sub>x</sub> and VOC control measures<sup>37</sup> included in its SIP submittal, the control measures for turbines operating during HEDD had a cost effectiveness of \$44,000 per ton NO<sub>x</sub> reduced; the control measures for oil-fired boilers operating during HEDD had a cost effectiveness up to \$18,000 per ton NO<sub>x</sub> reduced; and, for natural gas compressor engines and turbines rules adopted in 2017, the rules have a cost effectiveness up to \$26,020 per ton NO<sub>x</sub> reduced, with SCR costs up to \$18,983 per ton NO<sub>x</sub> reduced.

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<sup>37</sup> Table 5 of the New Jersey SIP submittal.



In its submittal to the EPA, New Jersey indicated that it believes the methodology that the EPA traditionally has used for evaluating the cost of implementing controls, using a ratio of annual emission reductions to the annualized cost, does not reflect the use of EGUs solely used during HEDD. New Jersey suggested an alternative methodology using a ratio of daily emission reduction on a HEDD day to the annualized cost (or DERACR) to address the higher HEDD NO<sub>x</sub> emissions that far exceed an annual or ozone season average. New Jersey also noted that a short-term standard, such as the 8-hour ozone standard, should have a short-term cost-effectiveness formula. Further, using a short-term evaluation formula demonstrates that sources that emit high emissions on high ozone days, but have a low annual average, can be controlled using highly cost-effective measures. New Jersey included an example of this methodology in its submittal.

#### *EPA's Review*

EPA is proposing to find that the New Jersey SIP submittal does not meet the State's obligations with respect to prohibiting emissions that will contribute significantly to nonattainment or interfere with maintenance of the of the 2008 ozone NAAQS in any other state.

As previously indicated in this section, New Jersey acknowledged that it is linked to downwind receptors. New Jersey identified an even greater number of linkages to nonattainment and maintenance sites in other states than the EPA by using a more conservative approach. Specifically, the State analyzed current receptors using measured values rather than projected future receptors using modeling. Their analysis confirms the EPA's analysis in the Revised CSAPR Update that New Jersey is linked to nonattainment and/or maintenance receptors in downwind states. The State identified fourteen nonattainment and maintenance sites in Connecticut, New York, and Pennsylvania based on 2015-2017 monitored design values exceeding the 2008 ozone NAAQS. New Jersey indicated that it potentially significantly

contributed to all of the sites based on the predicted New Jersey contribution of more than 1 percent of the NAAQS (0.75 ppb) in 2017 using the EPA contribution modeling performed for the CSAPR Update.

Based on the air quality analysis for the Revised CSAPR Update, the EPA identified potential nonattainment receptors in 2021 in Stratford, Connecticut (monitor ID 090013007), and Westport, Connecticut (monitor ID 090019003), and maintenance area receptors in Madison, Connecticut (monitor ID 090099002), and Houston, Texas (monitor ID 482010024 ). New Jersey was linked to the nonattainment and maintenance receptor sites at the Connecticut sites based on contribution above the threshold of 1 percent of the 2008 ozone NAAQS (i.e., 0.75 ppb). The levels of New Jersey State contribution to each nonattainment and maintenance receptor in 2021 are shown in Table 2:

**Table 2. New Jersey Contributions to Downwind Nonattainment and Maintenance Areas**

<b>State</b>	<b>Nonattainment receptors</b>		<b>Maintenance receptors</b>	
	<b>Stratford, CT</b>	<b>Westport, CT</b>	<b>Madison, CT</b>	<b>Houston, TX</b>
<b>New Jersey</b>	7.70 ppb	8.62 ppb	5.71 ppb	0.00 ppb

As previously noted in this section, New Jersey asserted in its May 2019 submittal that considering air quality, the emissions reductions from New Jersey’s adopted measures, and the cost effectiveness of those measures, no additional emissions reductions from New Jersey are necessary to address its contribution to downwind nonattainment and maintenance areas. New Jersey stated that control measures were adopted and implemented before attainment deadlines and go beyond previously established EPA cost effectiveness thresholds. New Jersey also provided information documenting the emissions reductions that have been made throughout the State beginning in 2002 with corresponding improvements in air quality in New Jersey to demonstrate the impact of New Jersey control measures.

New Jersey, however, did not adequately demonstrate that the State was controlling its emissions despite the fact that the State conceded that it was potentially significantly contributing to 14 receptors in 2017 at steps 1 and 2. The SIP submittal pointed to its existing NO<sub>x</sub> and VOC control measures that were adopted by the State to satisfy its good neighbor obligations. However, the State did not analyze whether additional control measures could reduce the impact of New Jersey's emissions on out of state receptors. Any additional control measures identified by the analysis would need to be submitted to the EPA for approval into the SIP, approved by the EPA, and made federally enforceable. Step 3 of the good neighbor framework requires that the state (or the EPA in the case of a FIP) conduct a more rigorous analysis of what emission controls are necessary to eliminate "significant" contribution to a downwind nonattainment or maintenance receptor. Merely identifying a range of various emissions control measures that have been or may be enacted at the state level, without analysis of the impact of those measures on the out of state receptors, is insufficient as an analytical matter. Further, step 4 of the good neighbor framework calls for those measures identified in step 3 which are necessary to eliminate significant contribution to be included in the state's SIP, so that they may be approved by EPA and rendered permanent and federally enforceable.

The EPA acknowledges that the State's control measures listed in the State's SIP submittal may be nominally more stringent than the EPA cost-thresholds used for the CSAPR Update or Revised CSAPR Update. Additionally, New Jersey's existing control measures have undoubtedly reduced the amount of transported ozone pollution to other states and have contributed to the downward emissions trends and improving air quality in the State as shown in the State's SIP submittal. However, in light of continuing contribution to out of state receptors from the State at steps 1 and 2 despite these measures, New Jersey's SIP submission failed to evaluate the availability of any additional air quality controls to improve downwind air quality at nonattainment and maintenance receptors at step 3.

In the Revised CSAPR Update, the EPA has determined that additional NO<sub>x</sub> emissions reductions are available and necessary to eliminate New Jersey's significant contribution and has finalized a NO<sub>x</sub> ozone season emissions budget for the State's EGUs. Specifically, after assessing potential control strategies, the EPA identified an EGU control stringency that reflected the optimization of existing SCR controls and installation of state-of-the-art NO<sub>x</sub> combustion controls, represented by a cost of \$1,600 per ton of NO<sub>x</sub> reduced; and the optimization of existing SNCR controls, represented by a cost of \$1,800 per ton of NO<sub>x</sub> reduced. The EPA then finalized EGU NO<sub>x</sub> ozone season emissions budgets reflecting the identified EGU control stringency. New Jersey's NO<sub>x</sub> ozone season emissions budget as determined by the EPA under the Revised CSAPR Update is 1,253 tons in 2021 and subsequent years. The NO<sub>x</sub> ozone season budgets from 2021 and beyond represent an approximate seven percent<sup>38</sup> reduction from a 2021 baseline of EGU emissions in New Jersey.<sup>39</sup> In the Revised CSAPR Update, the EPA determined that these reductions are necessary to eliminate New Jersey's significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states.

The SIP revision submitted by New Jersey does not provide a demonstration that the existing permanent and federally enforceable control measures already contained in the State's SIP achieve the emissions reductions needed to meet New Jersey's obligations in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program established in the Revised CSAPR Update. The EPA modeling performed to evaluate New Jersey's contributions and emissions reduction obligations takes into consideration many of the emissions reduction programs identified by the State, and in the Revised CSAPR Update, yet the EPA found continuing contribution from New Jersey to receptors in Connecticut in 2021 and later years. At a minimum, then, in order for EPA to approve a SIP revision to replace the FIP promulgated in the Revised CSAPR Update, the State's

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<sup>38</sup> See Ozone Transport Policy Analysis Final Rule TSD available from the Revised CSAPR Update Docket ID No. EPA-HQ-OAR-2020-0272, via the Federal eRulemaking Portal: [https:// www.regulations.gov](https://www.regulations.gov).

<sup>39</sup> Emissions projected in New Jersey for each year in the absence of the Revised CSAPR Update.

SIP must obtain through federally enforceable emission controls the same or greater level of emissions reduction achieved by the FIP.

As provided in Section VII.D.3 of the preamble for the Revised CSAPR Update, should a state submit a SIP revision to replace the FIP that achieves the necessary emissions reductions but does not use the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program, in order to best ensure its approvability, the SIP revision should include the following general elements: (1) A comprehensive baseline 2021 statewide NO<sub>x</sub> emissions inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that EPA used to calculate the required state budget in this final action (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emissions reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such NO<sub>x</sub> controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (see 40 CFR part 51 subpart K (“source surveillance” requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emissions reductions in time to meet the 2021 compliance deadline.<sup>40</sup>

The New Jersey SIP submittal did not provide a sufficient demonstration that the existing permanent and federally enforceable control measures already contained in the State’s SIP achieve the emissions reductions needed to meet New Jersey’s obligations in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program. The State did not apply the e suggested analysis for

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<sup>40</sup> See 86 FR 23054, 23147-23148 (April 30, 2021) (describing expected elements needed to replace a Revised CSAPR Update FIP). In addition, should a state wish to adopt the Group 3 trading program itself into its SIP, EPA regulations address replacing the Revised CSAPR Update FIP with a Revised CSAPR Update SIP at 40 CFR 52.38(b)(12).

making such a demonstration, nor did it provide an alternative method for doing so. Based on the deficiencies identified in the New Jersey analysis, the EPA is proposing to disapprove the 2008 ozone New Jersey Infrastructure SIP submission for both the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I).

## **V. What action is EPA taking?**

The EPA is proposing to disapprove the portion of the New York and New Jersey SIP submittals pertaining to the requirements of CAA section 110(a)(2)(D)(i)(I) regarding interstate transport of air pollution that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS (i.e., CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2)) in other states. Disapproval does not start a mandatory sanctions clock pursuant to CAA section 179 because this action does not pertain to either a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5). The EPA has amended FIPs, in a separate action finalizing the Revised CSAPR Update for the 2008 ozone NAAQS, to reflect the additional emissions reductions necessary to address New York's and New Jersey's significant contribution to nonattainment and interference with maintenance. Therefore, this action does not trigger a duty for the EPA to promulgate FIPs for either New York or New Jersey. The EPA is soliciting public comment on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by following the directions in the **ADDRESSES** section of this *Federal Register* document.

## **VI. Statutory and Executive Order Reviews**

### **a. Executive Order 12866, Regulatory Planning and Review**

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed disapproval of SIP revisions under CAA section 110 will not create any new information collection burdens but simply proposes to disapprove certain State requirements for inclusion into the SIP.

c. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under CAA section 110 will not create any new requirements but simply proposes to disapprove certain State requirements, for inclusion into the SIP.

d. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

e. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

f. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

g. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply proposes to disapprove certain state requirements for inclusion into the SIP.

h. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

i. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

j. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action merely proposes to disapprove certain state requirements for inclusion into the SIP.



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: October 26, 2021.

**Walter Mugdan,**

*Acting Regional Administrator,*

*Region 2.*

[FR Doc. 2021-23638 Filed: 11/2/2021 8:45 am; Publication Date: 11/3/2021]